



# Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY  
DOCKET NO. 452

IN THE MATTER  
OF  
ROBERT F. SHEEHAN, JR.

## DISPOSITION AGREEMENT

This Disposition Agreement (Agreement) is entered into between the State Ethics Commission (Commission) and Robert F. Sheehan, Jr. (Mr. Sheehan) pursuant to Section 5 of the Commission's **Enforcement Procedures**. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On February 19, 1992, the Commission, initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Mr. Sheehan. The Commission has concluded its inquiry and, on June 16, 1992, found reasonable cause to believe that Mr. Sheehan violated G.L. c. 268A.

The Commission and Mr. Sheehan now agree to the following findings of fact and conclusions of law:

1. Mr. Sheehan was, during the time here relevant, a Board of Health (BOH) member in the town of Granby. As such, Mr. Sheehan was a municipal employee as that term is defined in G.L. c. 268A, §1.

### **Repair Percolation Tests**

2. Among other public health issues, the BOH oversees town septic system matters. BOH approval is necessary at several stages in the construction of a new septic system and the repair of an existing one.

3. The state environmental code requires that contractors locate septic systems in suitable soil. Consequently, engineers must conduct soil percolation tests to measure imperviousness. The environmental code mandates that a BOH representative witness percolation tests. Absent a successful percolation test, the BOH cannot approve an application for a disposal works permit for the construction of a septic system.

4. When an existing septic system fails, the code requires that a property owner conduct new or "repair" percolation tests before installing a new system. A BOH representative must witness these repair percolation tests. Following a successful repair percolation test, a land owner or developer hires an engineer to design the septic system (in some instances, however, the engineer has already designed the system). Conversely, there is no need for engineering design services when a property has failed a percolation test. In Granby, land owners and developers usually retain the same engineer who performed the percolation tests to provide the design services.

5. Mr. Sheehan's father, Robert Sheehan, Sr., is a registered professional engineer whose company, R.F. Sheehan Associates, performs engineering work involving septic systems in Granby. Typically, Sheehan Sr.'s fee for engineering services for repair septic systems is between \$300 and \$400.

6. Upon joining the BOH in 1987, Mr. Sheehan sought advice from town counsel as how to avoid conflicts of interest presented by his father's business. Town counsel correctly advised Mr. Sheehan to abstain from voting on BOH matters affecting his father's company,<sup>1/</sup> but neglected to inform him also to refrain from conducting field inspections of R.F. Sheehan Associates' work.<sup>2/</sup>

7. During the period from January 1, 1990 to August 1, 1990, Mr. Sheehan officially witnessed eleven repair percolation tests conducted by R.F. Sheehan Associates.

8. General Law chapter 268A, §19 prohibits<sup>3/</sup> a municipal employee from participating as such in a particular matter<sup>4/</sup> in which to his knowledge a member of his immediate family has a financial interest.

9. By witnessing the percolation tests, Mr. Sheehan participated<sup>5/</sup> in particular matters.

10. At the time he witnessed the percolation tests, Mr. Sheehan was aware that engineers who conducted percolation tests were usually retained to design the anticipated septic systems. Therefore, Mr. Sheehan knew his father had a financial interest in the percolation tests.

11. By witnessing the percolation tests, Mr. Sheehan participated as a municipal employee in particular matters in which to his knowledge an immediate family member<sup>6/</sup> had a financial interest, thereby violating §19.

12. The Commission found no evidence that Mr. Sheehan was improperly influenced in his review of the percolation tests, or that he misrepresented test data. Since the witnessing of repair percolation tests necessarily involves land that has already been subject to prior successful percolation tests, there was a great likelihood that the eleven tests would be successful. In addition, other BOH members independently reviewed the eleven percolation test results before issuing the respective disposal works permits.

13. Given town counsel's limited advice, the evidence also indicates Mr. Sheehan was unaware he was violating the conflict of interest law when he witnessed the eleven tests.<sup>7/</sup>

### **Top Soil/Sub Soil Inspection**

14. The state environmental code mandates that a septic system be located at least four feet above the water table or ledge formations. Whenever a septic system is engineered so that fill material must be added to create a four-foot layer beneath the system, the code requires that the installer use clean granular material free from impervious material to surround the system in a ten foot radius in all directions. A BOH representative ensures this requirement is satisfied by conducting a topsoil/sub-soil inspection of the material surrounding the system.

15. A septic system installation may require anywhere between 300 and 1500 yards of clean material. Generally, clean fill costs between \$4.00 and \$7.00 a yard.

16. From April 1990 to December 1990, Mr. Sheehan was employed by contractor Greg Orlen as an equipment operator. During this time period, Mr. Sheehan conducted one top soil/sub soil inspection of a septic system installed by Orlen.

17. General Laws, c. 268A, §19 also forbids a municipal employee from participating as such in a particular matter in which to his knowledge a business organization in which he is serving as an employee has a financial interest.

18. By conducting the topsoil/sub-soil inspection, Mr. Sheehan participated in a particular matter.

19. At the time he performed the inspection, Mr. Sheehan was aware his employer could not complete the septic system installation for his client without the topsoil/sub-soil inspection approval. Therefore, Mr. Sheehan knew that his employer possessed a financial interest in the inspection.

20. By conducting the topsoil/sub-soil inspection, Mr. Sheehan participated as a municipal employee in a particular matter in which to his knowledge his employer had a financial interest, thereby violating §19.

In view of the foregoing violations of G.L. c. 268A by Mr. Sheehan, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Mr. Sheehan:

1. that Mr. Sheehan pay to the Commission the sum of five hundred dollars (\$500.00) as a civil penalty for

violating G.L. c. 268A, §19; and

2. that Mr. Sheehan waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

**Date: October 6, 1992**

<sup>1</sup>Mr. Sheehan has consistently abstained from BOH votes involving his father's engineering business.

<sup>2</sup>Only written legal advice made a matter of public record and filed with the Commission constitutes a valid conflict of interest defense. *See, e.g., 930 CMR 1.03(3); In re Burgess*, 1992 SEC 570; *In re Lavoie*, 1987 SEC 286.

<sup>3</sup>Except as otherwise permitted in §19. None of the exceptions, however, are applicable here.

<sup>4</sup>"Particular matter," any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k). The Commission has determined that the witnessing of a percolation test is a particular matter. *See In re Lawrence*, 1987 SEC 284, 285.

<sup>5</sup>"Participate," participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

<sup>6</sup>"Immediate family," the employee and his or her spouse, and their parents, children, brothers and sisters. G.L. c. 268A, §1(e).

<sup>7</sup>Ignorance of the law is no defense to a violation of the conflict of interest law. *See e.g. Scola v. Scola*, 318 Mass. 1, 7 (1945); *In re Burgess*, 1992 SEC 570; *In re Doyle*, 1980 SEC 11, 13.